89-263

Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

August Term, 1989

MILTON A. CALESNICK &
ELEANOR J. CALESNICK, H/W
Appellants

vs.

REDEVELOPMENT AUTHORITY OF
THE CITY OF PHILADELPHIA
and
SUPERIOR COURT OF PENNSYLVANIA
Appellees

Petition for a Writ of Certiorari to The United States Court of Appeals for the Third Circuit

MILTON A. CALESNICK &
ELEANOR J. CALESNICK
Pro Se Appellants

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QUESTIONS PRESENTED

1. Whether the untimely entry of the Federal District Court's final Judgment was in error whereby it effected an erroneous termination of the Appellants' ongoing discovery process; and, where the presiding judge had interrupted and withheld his ruling to initiate the discovery process by stating: "before I rule, you [Counselor for the Appellee] will supply me with a certified copy of that order [early C.C.P. Order] since there may be some doubt as to its authenticity"; and, where the final order of the Court never included the determination of authenticity which it had requested, and upon which the destiny of the law suit was fully dependant.

2. Whether preclusion of the law suit by the Federal District Court upon the doctrine of res judicata was in error wherein the

issues presented were not identical to those of prior Federal law suits; and where, in addition, the merit content of the issues in the prior cases had not been adjudicated and made part of the final judgment - being a necessary requirement for preclusion.

3. Whether granting a Motion For Injunction under the All Writs Act was appropriate upon the District Court's erroneous determination that "the same claims in the instant complaint had been presented to the court" in prior litigation.

THE PARTIES

The Appellants are Milton A. Calesnick and his wife Eleanor J. Calesnick citizens of Montgomery County, Pennsylvania. The Appellee-Respondents are the Redevelopment Authority of the City of Philadelphia and the Superior Court of Pennsylvania.

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FEDERAL QUESTION

Rights of Citizens: Fourteenth Article of Amendments to the Constitution of the United States provides, in pertinent part: ". .nor shall any State deprive any person

of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES

12 U.S.C. § 1701

28 U.S.C. § 1291

28 U.S.C. § 1292

28 U.S.C. § 1257(3)

OTHER AUTHORITIES

United States Constitution: Article III, Section 2, Clause 1 - Judicial Power of Our Courts.

United States v. Reynolds, 1953, 73 S. Ct. 528, 345 U.S. 1, L.Ed. 727, 32 A.L.R. 2d 382.

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Petition for a Writ of Certiorari to The United States Court of Appeals for the Third Circuit

Appellants respectfully submit the Petition for a Writ of Certiorari to demonstrate that the Supreme Court of the United States has jurisdiction, and that the federal question is substantial. Appellants pray that the final decision of the Federal District Court and the United States Court

of Appeal for the Third Circuit be overturned not only because of inherent errors, but more importantly because of the extreme and unjustified harm the decision caused. The damages represent the life-savings of these Appellants which effectively altered the lives of their family.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit, entered April 4, 1989 (Appendix A) is an affirmation of the District Court Order and was without comment; the Order of the Court of Appeals for the Third Circuit on the Petition For Rehearing (Appendix B) denied the Petition and was also without comment - entered on May 3, 1989.

JURISDICTION

Milton A. Calesnick and his wife Eleanor J. Calesnick appeal from the judgment of the United States Court of Appeals for the Third Circuit submitted on March 10, 1989 and denied April 4, 1989 (Appendix A). A Petition For Rehearing was filed on April 4, 1989 and denied on May 3, 1989 (Appendix B). The Supreme Court of the United States has jurisdiction to review the decision of the Third Circuit by writ of certiorari under 28 U.S.C. § 1257(3).

The Supreme Court of the United States maintains judicial power, extended by the Constitution and the Congress, to review judgments of Federal District Courts under 28 U.S.C. § 1291 in actions which arise under an Act of Congress, i.e. 12 U.S.C. § 1701, et seq. (National Housing Act of June 27, 1934) parent law under which the Urban

Redevelopment Law of the Commonwealth of Pennsylvania was created (35 P.S. § 1701 et seq.); and, where violations of Fourteenth Constitutional Amendment Rights of Procedural Due Process and Equal Protection of the Laws are claimed - as herein. Judicial power is vested by Article III, Section 2, Clause 1 of the United States Constitution, and extends to all "cases & controversies" and established for the protection and enforcement of rights, prevention, redress or punishment of wrongs.

Jurisdictional law holds that a discovery-order controversy can be reviewed as part of an appeal from the final judgment: U.S. v. Reynolds, 1953, 73 S.Ct. 528, 345 U.S. 1, 97 L.Ed 727, 32 A.L.R. 2d 382. Additionally, the Federal District Court's Interlocutory Order (June 21, 1989) which

initated the discovery process, falls within this Court's jurisdiction and authority for review within the Interlocutory Appeal Statute, 28 U.S.C. § 1292.

STATEMENT OF THE CASE

Background of the Controversy

In 1965 Appellants purchased a poorly maintained antique house situated at 130 Delancey Street, Philadelphia, Pa. for total restoration in accordance with regulations of the Redevelopment Authority (RDA) of the City of Philadelphia. Similarly, these Appellants purchased an unimproved contiguous lot, in 1967, situated at 132 Delancey Street for development into a colonial garden. To accomplish these objectives, additional time was granted by the RDA - who had control over the development project area - with no final

or otherwise fixed date for completion of the project.

In 1970 the RDA instituted 2 law suits against these Appellants: Court of Common Pleas, Philadelphia County, September Term, 1970, No. 4483 & No. 4484 (one for each parcel of real estate) seeking Deed title to both properties on the charge that restorations had not been completed within the original one-year time period, despite having granted additional time. The demand for the properties was not within the terms of any agreement with the RDA, nor could such an inference of title transfer be ascertained from the terms of the agreement.

The 2 law suits were consolidated for trial and heard on merit before the Hon. Paul Ribner on June 15, 1972. Judge Ribner issued a Decree Nisi on February 28, 1973 which contained the following conclusion of

law:

> "The Redevelopment Authority of the City of Philadelphia waived the date originally set for completion of the restorations and the garden located at 130/132 Delancey Street, Philadelphia."

On October 18, 1974 - unknown to these Appellants at that time - the RDA, by their Counselor David S. Winston, maliciously, intentfully, and WITHOUT A COURT ORDER or other legal authority, criminally altered the official court dockets of both law suits by inscribing a false notation-entry to reflect that title to the subject-matter real estate were conveyed to the RDA by the Prothonotary of the Court. The notations are:

> July Term, 1970, No. 4483
>
> "Oct. 18, 1974: Prothonotary Americo V. Cortese - deed to Redevelopment Authority of the City of Philadelphia, 132 Delancey Street, Phila."
>
> July Term, 1970, No. 4484
>
> "Oct. 18, 1974: Prothonotary Americo V. Cortese - deed to Redevelopment

Authority of Phila., Premises 130 Delancey St., Phila."

NOTE: Direct access to the dockets was part of the standard procedure at that time, thus permitting tampering.

Based upon their fraudulent claim of property ownership, the RDA padlocked the properties, seized antique building material and construction equipment located on the properties belonging to these Appellants.

On March 5, 1979, in an effort to resolve all outstanding litigation, the RDA negotiated an agreement with these Appellants in which the RDA contributed Deeds to the two said parcels of real estate which they "owned". These Deeds were to be held by the Court of Common Pleas until these Appellants completed the restorations within a specific period of time; failure on the part of these Appellants would revert the Deeds back to the

RDA. In addition, all building material and equipment was to be returned, since they were necessary for further restorations in compliance with the agreement.

After the agreement was signed and it became effective, it was learned that the RDA could not return the building materials and construction equipment; consequently, these Appellants were unable to complete the project on time. Thereupon, the RDA, who were unconcerned with their failure to return the building materials and equipment, sought to enforce the terms of the agreement.

At this time, the fraudulent docket entries made by the RDA were exposed - coincidently. It became apparent that the RDA's contribution to the agreement of Deeds to the real estate was fraudulent, since the Deeds were NEVER in possession of the RDA. Immediately, the Court of Common Pleas was

petitioned to rescind and make void the agreement of March 5, 1979. Despite the efforts of these Appellants, on December 9, 1980, Judge Eugene H. Clarke, Jr. (Court of Common Pleas) issued an order which enforced the provisions and terms of the fraudulent agreement irrespective of proof that (1) the docket entries were fraudulent; (2) the said agreement was voidable since it contained a fraudulent contribution by the RDA; (3) the RDA failed to return both building materials and equipment to these Appellants for the fulfillment of their part of the agreement. A timely appeal to the Superior Court of Pennsylvania followed.

By its Memorandum Opinion (Appendix C) it is clear that the Superior Court understood the issues and greviences caused by the fraud of the RDA against these Appellants. However, instead of reviewing the frauds with which the

RDA was charged, the Superior Court CREATED A FRAUD of its own which it reviewed concerning litigants who were neither parties to nor litigants in the action - and, over whom the Court HAD NO JURISDICTION!

The entire content of the Superior Court's Memorandum & Judgment, including the elements which were utilized to create the Court's own fraud, were taken directly - almost word for word - from the Brief of the RDA submitted to the Superior Court. Utilization of a litigant's allegations of fact instead of the preserved records is a direct violation of the Superior Court's own ruling for court procedure.

This bizarre behaviour of the Superior Court of Pennsylvania violated these Appellant's Fourteenth Amendment Rights of Procedural Due Process & Equal Protection of the Laws based upon two distinctly separate

causes of abusive action.

(1) Failure of the Superior Court to review errors assigned to the Court of Common Pleas, wherein that court refused their obligation to rescind an agreement in which fraud committed by the RDA was incorporated.

(2) The issuance of a Judgment & Memorandum Opinion composed with an extrinsic fraud created by the Superior Court itself; and, the Judgment of which was against individuals who were neither parties nor litigants, and over whom the Superior Court had NO JURISDICTION whatsoever.

Prior Federal Law Suits

In 1985 these Appellants instituted two law suits in the Federal District Court for the Eastern District of Pennsylvania: (1) Calesnick v. Commonwealth of Pennsylvania & Redevelopment Authority of the City of

Philadelphia, Civil Action, No. 83-0498, 810 F.2d 1162 (3rd Cir. 1987) upon the foundation that the Superior Court of Pennsylvania failed to review the errors assigned to the Court of Common Pleas of Philadelphia County for not rescinding the agreement of March 5, 1979; (2) Calesnick v. Commonwealth of Pennsylvania, Superior Court of Pennsylvania and the Supreme Court of Pennsylvania, Civil Action, No. 85-1381, which was founded upon the frauds of the RDA. The District Court ruled upon both cases simultaneously and dismissed both law suits solely upon the basis that the frauds alleged to the RDA were ruled upon by the Superior Court (affirmed by the Supreme Court of Pennsylvania) as being "absurd", despite these Appellants' unquestionable display of proof that the "absurd" ruling was NOT upon the fraud of the RDA, but upon the "fraud" which was CREATED by the Superior Court - and which never existed.

Statement of the Instant Case

In 1988 these Appellants instituted the instant law suit: Calesnick v. Superior Court of Pennsylvania & Redevelopment Authority of the City of Philadelphia, Civil Action, No. 88-1448 which is a COLLATERAL ATTACK upon the Judgment & Memorandum Opinion of the Superior Court since it is constructed upon a fraud created by the Superior Court itself. The focus of this action is upon having the Judgment & Memorandum Opinion of the Superior Court ruled void, having no legal standing and commanding effect.

Proceedings in the Courts Below on the Instant Case

The case proceeded only through the discovery and pleadings stages. The Court ruled (Appendix D) that "precisely the same allegations were set forth by plaintiffs in

previous actions in this Court against the Redevelopment Authority as well as other defendants", whereby the Superior Court's Motion to Dismiss and the RDA's Motion For Summary Judgment were granted on May 17 and May 18, 1988.

By Order of May 24, 1988 the above two Orders were vacated to provide a hearing on the RDA's Motion For Injunction & Sanctions under Rule 11. An evidentiary hearing was held on June 21, 1988 at which time Counselor for the RDA presented the Court with copies of various complaints & briefs of prior actions to justify his Motion For Injunction. Appellants Milton A. Calesnick was requested to identify and authenticate each document presented. The Appellant could not verify the authenticity of one particular document: Amended Order of October 10, 1974. In response thereto, the Court (Judge Thomas N.

O'Neill, Jr. presiding) made the following order:

> "You [Counselor Rifkin] will supply me before I rule, with a certified copy of that order since Mr. Calesnick feels that there may be some doubt as to its authenticity. Therefore, I will require a certified copy."

Subsequently, on July 22, 1988 Counselor Rifkin delivered a letter to Judge O'Neill which stated that the Amended Order of Oct. 10, 1974 could NOT be certified. The RDA's failure to produce a certified copy of the Amended Order initiated action by these Appellants to continue the discovery process by requesting the production of Deeds and Answers to interrogatories to the real properties situated at 130/132 Delancey Street, Philadelphia, Pa. The Amended Order in question directed the Prothonotary of the Court of Common Pleas to convey the parcels of real estate to the RDA from these Appellants; and, the dockets of the Court of Common

Pleas indicate that the conveyances were made on October 18, 1974. The discovery would have verified whether the Amended Order was authentic or would have proven it to have been fraudulently created by the RDA.

Until this time, no justice ever examined and questioned the authenticity of the Amended Order of October 10, 1974. These Appellants, accordingly, requested the RDA to produce the said Deeds and answers to interrogatories under appropriate Rules of Civil Procedure. Copies of all requests for discovery and letters pertaining thereto were delivered to Judge O'Neill so that the Court would be aware of the discovery process at all times. As expected, the RDA filed objections to every effort at discovery, stating:

> "These requests for production of documents are not relevant to the

> issues presently before the Court and are not reasonably calculated to lead to the discovery of relevant information."

In addition, the RDA Defendant filed a Motion For Protective Order which failed to display any acceptable reason - such as annoyance, oppression, embarrassment, or undue burden or expense.

Despite the clear logic for the production of the Deeds and answers to related interrogatories, on September 28, 1988 the District Court issued an Order which effectively terminated the discovery process, whereby the Court never determined whether the Amended Order was authentic or fraudulent. The Court had specifically expressed a need for this knowledge when the Court said: "before I rule, .. I will require a certified copy .. since Mr. Calesnick feels that

there may be some doubt as to its authenticity".

The Order of September 28, 1988 also granted the RDA's Motion For Injunction under the All Writs Act.

ARGUMENT

This Appeal to our Supreme Court of the United States is a request to overturn the decision of the United States District Court not only because it was wrong, but more importantly because of the extensive harm the decision created in the lives of these Appellants; and, overturning the decision would clearly be essential to remedy the severe damages which accompanied the injury. The damages include the loss of these Appellants' life savings.

The errors in the Court's decision are evident from the facts presented; but, the severe damages sustained must be recited. The RDA took possession of these Appellants' two parcels of real estate and sold them for $287,000.00 which they kept; in addition, the RDA seized and destroyed personal property (antique house parts, building mater-

ials, equipment - including a front-end loader all valued at approximately $50,000.00 - a total loss of approximately $337,000.00.

ARGUMENT

Part I

The discovery of facts by a trial court is basic for the determination of a fair judgment; and, the sole issue in this part of the Appeal is whether the District Court erred in NOT requiring the RDA Defendant to produce documents and answers to interrogatories propounded by these Appellants, where the presiding jurist himself interrupted his ruling to initiate the discovery process by demanding that the RDA Defendant produce a certified copy of the Amended Order of Oct. 10, 1974 - the authenticity of which was questionable.

At the hearing on June 21, 1988, when

Appellant questioned the authenticity of the Amended Order of Oct. 10, 1974, Judge O'Neill made the following order:

> "You [Counselor Rifkin - for RDA] will supply me, before I rule, with a certified copy of that order since Mr. Calesnick feels that there may be some doubt as to its authenticity. Therefore I will require a certified copy."

Subsequently, on June 22, 1988, Counselor Rifkin delivered a letter to Judge O'Neill stating that the Amended Order could NOT be certified. Thereupon, as a natural course, these Appellants continued discovery.

The thrust of these Appellants' discovery was for the production of the Deeds by the RDA to the two parcels of real estate alleged to have been conveyed to the RDA on October 18, 1974. <u>These Deeds would have verified that the Amended Order had existed</u> since the alleged conveyance was so directed by the said Order. These Deeds are public documents which would have been recorded by the Recorder

of Deeds (Philadelphia County) if they had existed. Investigation disclosed that the RDA DID NOT record Deeds to the real Properties situated at 130/132 Delancey Street at any time in 1974. Therefore, the request for the production of these Deeds was reasonable - if they existed. The RDA took the position that the Deeds were not relevant to the issues of the case - which is in contradiction to the opinion of Judge O'Neill since Judge O'Neill interrupted his ruling and awaited the certification of the Amended Order, which, alternatively, could have been verified by production of the said Deeds.

Despite the clear showing that the records of the Recorder of Deeds shows that the Deeds do not exist and that no transfer of these properties took place in 1974, and that the RDA made every effort to conceal this information from the Court, the District Court's

Order of September 28, 1988 erroneously terminated this crucial discovery process. The RDA should have either produced the Deeds or have admitted that they never existed; and, the behaviour of the RDA is suspect. FRAUD BY THE RDA IS THE HEART OF THE LAW SUIT.

Prior to the hearing on June 22, 1988 Judge O'Neill was fully aware of the Appellants' charges of frauds against the RDA by the Complaint and with additional documents in subsequent briefs. The frauds perpetrated by the RDA included: (a) drafting of the fraudulent Amended Order of October 10, 1974; (b) fraudulent entry (tampering) into the court dockets which falsely reflect that the 2 parcels of real estate belonging to these Appellants had been conveyed to the RDA on October 18, 1974; (c) by seizing and padlocking the real properties and maintaining possession for more than 5

years; (d) seizing and destroying personal property - building material and equipment.

The Exordium of the Complaint states:

> "This law suit seeks the enforcement of Constitutional Rights as well as remedy for the injury suffered by the Plaintiffs which developed as a direct result of the intentional, malicious, and intrinsic fraud specifically designed with cunning and deception, executed by the Redevelopment Authority of the City of Philadelphia, during ongoing litigation, to unlawfully take possession of very valuable real estate belonging to these Plaintiffs; and, the fraudulent and criminal act was perpetrated by the Redevelopment Authority under the cloak of vested authority by virtue of State Law. The fraud was later incorporated by the Redevelopment Authority into an Agreement with these Plaintiffs."

NOW, AT LAST, it appeared that Judge O'Neill, by requesting certification of the Amended Order of Oct. 10, 1974, was about to expose the fraudulent activities of the RDA; and, the law suit would have terminated in favour of these Appellants, since the basis of the case was the issue of fraud by the

RDA. Although the interlocutory order of the Court was unfulfilled, and the Court had not received that crucial information which was requested from the RDA by Judge O'Neill, on September 28, 1988 the District Court entered its final order - without comment - and erroneously terminated the ongoing discovery process.

Considering that the only document the RDA was requested to produce was a Deed to real estate which the RDA claimed it owned; and, also considering that no limitations, restrictions, nor objections to the discovery process had been issued by the Court (or had been requested by the RDA); and, since Judge O'Neill had offered NO EXPLANATION for the untimely entry of his final order, this Honorable Court should find sufficient reason to overturn the error created by the District Court and allow

these Appellants to continue their discovery process since their Right to Procedural Due Process & Equal Protection of the Laws is a Constitutional Guarantee within the Fourteenth Amendment to the United States Constitution.

Since the District Court itself had put aside it's ruling and awaited the production of certification of the Amended Order of Oct. 10, 1974, there can be no doubt as to whether the document sought to be authenticated was important and relevant to the issues of the law suit, or whether discovery was reasonably calculated to lead to information necessary for the Court's decision. These determinations of relevancy and importance had been decided by Judge O'Neill; and, all arguments to the contrary by the RDA Defendant must be considered futile. The importance of this discoverable information is obvious and

would settle the long dispute between the parties for all time.

One of the most serious charges in a civil action is the charge of FRAUD, particularly when the accusation is made against a governmental agency; and, it is the Appellants' sincere belief that - in the case at hand - wherein the pinnacle of litigation had been reached by the production of one document - DEED TO REAL ESTATE - it was incumbent upon the Court to determine the validity of the charge of fraud by allowing and/or insisting that the Deed be produced. In consideration of duty to protect Constitutional Rights of Procedural Due Process, and with the logic inherent in our justice system, Judge O'Neill was obliged to preserve these Appellants' Rights - not necessarily because these Appellants were correct, but more importantly because of the tremendous

harm which resulted from the erroneous curtailment of their right to discovery. The harm created was the loss of the Appellants' life savings!

Jurisdictional Determinations

The Standard For Review is that granting, denying and/or interference to terminate ongoing discovery is a matter within the District Court's discretion; however, the Court's discretion will be reversed only if the action of the Court is ruled to be improvident, affecting the party's rights, and results is substantial harm. In this respect the Court may find the decision in Edgar v. Fimley, C.A., 312 F.2d 533 most instructive. Here the District Court Judgment was reversed because the Court had erroneously sustained objections to interrogatories which would have developed very

important information which might have reasonably overturned the ruling of the court.

In the matter of Roebling v. Anderson, 103 U.S. App. D.C., 237, 257 F.2d 615, 619 (1958) it was determined that the District Court erred in denying the motion to produce essential and relevant documents under Rule 34 since these documents were in the Defendant's possession. The documents were records kept in the ordinary course of the defendant's business, and disclosure would not have been prejudicial to the defendant.

The Court may find the matter of Bell v. Swift & Co. (283 F.2d 407, 1960) parallel to the instant case. Here the Court of Appeals for the Fifth Circuit decided that although the District Court erred in refusing to require the Defendant-Appellee to answer interrogatories, the Court's error raised

only academic questions bearing on a fair and orderly system of justice; however, the appellant had not shown that he was hurt by the error of the court. In the matter at hand, the damage to these Appellants is their life savings - $337,000.00.

In the criminal action of United States v. Agurs, 427 U.S. 97, the prosecutor failed to volunteer exculpatory material, and this Court stated: "The proper standard of materiality of undisclosed evidence is that if the omitted evidence creates a reasonable doubt of guilt that did not otherwise exist, constitutional error has been committed."

In the matter of Morris Stulsaft Foundation v. Superior Court, 54 Cal. Rptr. 12, the Court's decision was founded upon the theory that: "Where discovery is sought of non-privileged matter which is directly relevant to issues before the court, there is no room

for the exercise of court's discretion, since the party seeking to discover is entitled to it as a matter of right."

ARGUMENT

Part II

The District Court, by its Opinion & Memorandum, granted the Defendants' Motion To Dismiss & Motion For Summary Judgment upon the erroneous assumption of Judge O'neill that the issues and claims in the instant law suit were identical to those of the 2 prior Federal District Court actions. To wit:

> "Precisely the same allegations were set forth by plaintiffs in previous actions in this Court against the Redevelopment Authority and the Superior Court as well as other defendants."
>
> "Since plaintiffs' claims have been the subject of the final adjudication by Judge Pollak, the doctrine of Res Judicata bars this action. (Appendix D)

The two prior Federal District Court cases

and the instant case have totally dissimilar issues and claims, so the Doctrines of Res Judicata and Collateral Estoppel are not applicable.

Prior Federal Law Suits Compared With The Instant Law Suit

Both prior law suits were filed with the Federal District Court for the Eastern District of Pennsylvania: Calesnick v. Commonwealth of Pennsylvania & Redevelopment Authority of the City of Philadelphia, C.A., No. 83-0498; and Calesnick v. Commonwealth of Pennsylvania, Superior Court of Pennsylvania & Supreme Court of Pennsylvania, C.A., No. 85-1381.

In case No. 83-0498 the issue & claim were that the Superior Court FAILED to review errors assigned to the Court of Common Pleas of Philadelphia County.

In case No. 85-1381 the issue & claims were founded upon the frauds perpetrated by the Redevelopment Authority.

The instant matter is a COLLATERAL ATTACK upon the Judgment & Memorandum Opinion of the Superior Court of Pennsylvania, since the Court's opinion contained an extrinsic fraud created by the Superior Court itself. (Appendix C)

The two prior actions were heard by the Honorable Louis H. Pollak simultaneously, and both cases were dismissed on the basis that the fraud assigned to the RDA had been ruled upon by the Superior Court as "absurd". Judge Pollak's ruling was made despite the fact that the Superior Court's Memorandum Opinion clearly displayed that the Superior Court did not review the frauds perpetrated by the RDA, but, instead, reviewed a 'fraud' against individuals (the Court, Prothonotary,

and Bar Association) who were neither party nor litigant to the action, and over whom the Superior Court HAD NO JURISDICTION, and against whom these Appellants' had never made charges.

Judge Pollak erred in having accepted the Judgment of the Superior Court without imput of his own, and compounding the error, by utilizing the ruling of "absurd" as though it referred to the frauds committed by the RDA - and, it was on this basis that the law suit was dismissed.

The only similarity between all three Federal District Court cases is that the RDA and the Courts of Pennsylvania appear as the Defendants and the Calesnicks as Plaintiffs. Each action is composed of separate and very distinct causes of action and issues.

Judge O'Neill, in His Honor's Opinion, dismissed the instant Complaint upon the

basis that the identical issues had been ruled upon by Judge Pollak in the prior action; and, since Judge Pollak dismissed the case on the basis of Collateral Estoppel, Judge O'Neill perceived no reasons to rule otherwise. Had Judge O'Neill made an independent investigation of the legal history, His Honor would have realized that the Judgment of the Superior Court was legally sterile and voidable with no commanding affect upon subsequent proceedings; and that the Judgment & Memorandum Opinion of Judge Pollak INHERITED the constructed and extrinsic fraud developed by the Superior Court.

Judge Pollak's Comments on the Prior Cases

There can be no better authority on the issue in the prior action before Judge Pollak than Judge Pollak himself who stated in His Honor's Opinion of June 18, 1985:

> "Plaintiffs assert that they do not attack the validity of the state court order but to correct the state court's failure to properly review each of the issues raised in plaintiffs' appeal to the Superior Court."

Indeed, Judge Pollak's statement is well corroborated by the Exordium of these Appellants' prior Complaint (No. 83-0498):

> "The Complaint does not find fault with any substantive laws or Rules of Court; it is directed solely against the arbitrary and unreasonable procedural practice of ignoring issues presented and accepted for appeallate review."

In contradistinction, the instant Complainst is a specific and deliberate COLLATERAL ATTACK against the Superior Court's Judgment and Memorandum Opinion of July 22, 1983 in which the RDA Defendant was SUBSTITUTED, and

thereby their frauds were never adjudicated. Since the RDA and their frauds were never adjudicated, they remain a viable defendant to the charges of fraud; and, the possibility of Res Judicata and Collateral Estoppel are non-existent.

Conditions Necessary for the Application of Collateral Estoppel

Collateral estoppel demands that all of the following requirements must be met:

1. issues in the instant case and the prior case be identical;
2. that there be a final judgment on the MERIT of the prior issues;
3. parties in both actions are identical, or in privity with either;
4. issues in the prior action be fully litigated;
5. that the issue be essential to the judgment in the prior action.

The doctrine of Collateral Estoppel is not applicable to the instant case for the following reasons:

1. The issue in the prior action was, as Judge Pollak announced: "failure to review issues raised in their appeal". Since the instant suit is a collateral attack, obviously the issues are totally dissimilar;
2. Since the actual frauds of the RDA were substituted by the Superior Court itself, most certainly the issues were never adjudicated on merit;
3. Since the issue of the RDA's frauds were removed from the case and substituted, the issues could not have been "fully litigated" and made "essential to the judgment in the prior action".

Jurisdictional Holdings

Jurisdictional law holds that in a sub-

sequent proceeding under a different cause of action - as herein, the doctrine of Res Judicata and Collateral Estoppel do not apply to issues raised in the prior action but which were NOT PASSED ON and decided by the court. In Nashus & L.R. Corp. v. Boston & L.R. Corp., 164 Mass 222, 41 NE 268, the court determined:

> "A demand or claim is not res judicata, though it was interposed in a prior action along with other claims, if the final judgment of the court appeared to be upon the other claims and there is no evidence that the claim was in fact argued, considered, or determined by the court."

This determination for the necessity of the issue to be adjudicated and made essential to the final judgment for the application of res judicata and collateral estoppel was further substantiated in the following cases: Washington, A. & G. Steam Packet Co. v. Sickles (US) 5 Wall 580, 18 L.Ed 550; Williams v. Patterson, 230 Miss 865, 34 S.2d 366;

Harvey v. Getchell, 190 Or 205, 225 P.2d 391; Hunter v. Hunter, 63 SC 78, 41 SE 33; Gronseth v. Brubakken, 56 SD 230, 228 NW 189; Purcellville v. Potts, 179 Va 514, 19 SE 2d. 700, 141 ALR 633.

The following two jurisdictional determinations are most instructive. In Smith v. Smith, 235 Minn 412, NW 2d 276, 32 ALR 2d 1135, the court determined that "the doctrine of res judicata & collateral estoppel DO NOT PRECLUDE relitigation of an issue raised by the pleadings in the former action, but withdrawn from consideration of the court either by stipulation of the parties or otherwise". In Todaro v. Gardner, 3 Utah 2d 404, 285 P.2d 839 the court noted: "A judgment is NOT res judicata as to matter which a court DELIBERATELY and EXPRESSLY REFUSED to determine".

ARGUMENT

Part III

As a final act in the Court's Memorandum, the Motion For Injunctive Relief was granted upon the erroneous belief that the same issues were relitigated by these Appellants in the various actions brought before the Court. As shown previously, the issues and claims in each action and the thrust of each case was different, although the same adversaries were involved each time. The purpose of the Appellants was to expose fraud and to seek justice; and most certainly, harassment, annoyance, and frivolousness were not the aims, nor was there any intent to burden the courts. The devious means by which the RDA was able to circumvent justice in the courts, and conceal incriminating evidence of fraud by evasive techniques created frustration and fomented the strong desire to liberate

the truth and to defend the system of justice under which we survive.

Granting injunctive relief was erroneous and without justification, rewarded the culprit and further burdened the victim.

CONCLUSION

For all of the foregoing reasons, the Appellants believe that the questions presented by this Petition are substantial, particularly since fundamental Constitutional Right of Due Process has been violated. In consideration that the effects of the decisions of the Courts Below have been so devastating for this family, the Appellants respectfully urge this Honorable Court to give this case its full consideration and to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

Milton A. Calesnick

MILTON A. CALESNICK,
Appellant

Eleanor J. Calesnick

ELEANOR J. CALESNICK,
Appellant

APPENDIX "A"

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NO. 88-1834

On Appeal From The United States

District Court For The Eastern

District Of Pennsylvania

Submitted March 10, 1989

Circuit Judges

STAPLETON, GREENBERG and SCIRICA

Judgment Order

"After consideration of the Contentions raised by appellants, it is ORDERED AND ADJUDGED that the judgment of the district court be and is hereby affirmed, Costs taxed against appellants."

By the Court

Circuit Judge

Clerk

Dated: Apr. 4, 1989

APPENDIX "B"

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NO. 88-1834

On Appeal From The United States

District Court For The Eastern

District Of Pennsylvania

SUR PETITION FOR REHEARING

Circuit Judges

STAPLETON, GREENBERG and SCIRICA

ORDER

The petition for rehearing filed by appellants in the above-entitled case having been submitted to the judges who participated in the decision of this court and no judge who concurred in the decision having asked for rehearing, the petition for rehearing is denied.

By the court

Circuit Judge

Dated: May 3, 2989

APPENDIX "C"

IN THE SUPERIOR COURT

OF PENNSYLVANIA

NO. 367 Phila. 1981

Appeal From The Order Of

December 9, 1980 In The

Court Of Common Pleas Of Philadelphia

County, Civil at No. 1713

September Term, 1976

Before:

WICKERSHAM, ROWLEY and WATKINS, JJ.

MEMORANDUM OPINION:

"In this case the appellants, in their pro se brief, appeal from an order of the court below which refused to rescind an agreement between the appellants and the Redevelopment Authority of the City of Philadelphia. The appellants allege that the agreement was "constructed upon fraudulent foundations, and is voidable, as a matter of law".

On December 9, 1980, the court below

entered an order which enforced a prior order of the court by directing that a deed to the premises at 130-132 Delancey Street, Philadelphia be delivered to the Redevelopment Authority of Philadelphia and filed of record.

* * *

In their appeal, the appellants allege fraud on the part of the courts, the Bar Association and the Prothonotary. A review of the record demonstrates that such claims are absurd. The Redevelopment Authority properly filed its motion to enforce the previous order when appellants failed to meet their obligations under the aforesaid Consent Order."

APPENDIX "D"

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

NO. 88-1448

MEMORANDUM:

O'Neill, J. September 28, 1988

In this action, plaintiffs, appearing pro se, assert that they have been wrongfully deprived by defendant Redevelopment Authority of title to a house and lot located at 130-132 Delancey Street, Philadelphia, and of certain building materials and construction equipment which were located at that address. They also contend that defendant Superior Court of Pennsylvania failed to review adequately and properly the issues presented in an appeal of an earlier state court proceeding involving the same properties to which they and the Authority were parties. Defendants' actions are alleged to constitute a violation of the due process and equal protection clauses of the

Fourteenth Amendment.

Precisely the same allegations were set forth by plaintiffs in previous actions in this Court against the Redevelopment Authority and the Superior Court as well as other defendants.

* * *

In his exhaustive (57 pages) opinion in the Redevelopment Authority case, my colleague Judge Pollak concluded that all of plaintiffs' claims were barred by final judgments adverse to plaintiffs rendered in various actions in the Pennsylvania courts in the years 1970 to 1984. Reference is made to his opinion for a description of the state court litigation. In the Commonwealth of Pennsylvania action, which attacked the state court judgment, Judge Pollak held that the alleged conduct of the Superior Court did not violate rights protected by the U.S. Constitution.

Since plaintiffs claims have been the subject of final adjudication by Judge Pollak, the doctrine of res judicata bars this action. I turn now to defendants' motion for an injunction under the All Writs Act and the Authority's motion under Rule 11.

* * *

O'Neill, J.

Supreme Court, U.S.
FILED
SEP 7 1989
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 89-263

IN THE

SUPREME COURT OF THE UNITED STATES

August Term, 1989

MILTON A. CALESNICK and
ELEANOR J. CALESNICK, H/W,
Petitioners

v.

REDEVELOPMENT AUTHORITY OF THE
CITY OF PHILADELPHIA and
SUPERIOR COURT OF PENNSYLVANIA,
Respondents

BRIEF OF REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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No. 89-263

IN THE

SUPREME COURT OF THE UNITED STATES

August Term, 1989

MILTON A. CALESNICK and
ELEANOR J. CALESNICK, H/W,
Petitioners

v.

REDEVELOPMENT AUTHORITY OF THE
CITY OF PHILADELPHIA and
SUPERIOR COURT OF PENNSYLVANIA,
Respondents

BRIEF OF REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Chief Justice and Justices of the Supreme Court of the United States:

Respondent Redevelopment Authority of the City of Philadelphia ("RDA") respectfully requests that the petition for writ of certiorari of the petitioners, Milton A. Calesnick and Eleanor J. Calesnick, H/W (collectively "Calesnicks"), be denied for the reasons set forth herein.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether the petitioners are entitled to review by the Supreme Court of a decision by the court of appeals affirming the trial court's dismissal of the petitioners'

claims on the basis of *res judicata* and collateral estoppel where the petitioners have litigated the same issues and claims in three prior actions?

2. Whether the petitioners are entitled to review by the Supreme Court of a decision by the court of appeals affirming the trial court's refusal to permit discovery on issues already determined against the petitioners by the trial court?

3. Whether the petitioners are entitled to review by the Supreme Court of the trial court's injunction against further litigation by the petitioners of issues and claims decided against them in four separate actions where the petitioners did not challenge the issuance of an injunction in the court of appeals?

JURISDICTION

The Supreme Court has jurisdiction to hear an appeal at its discretion from the final judgment of a court of appeals pursuant to 28 U.S.C. §1254(1) (1988).

COUNTER-STATEMENT OF THE CASE

In 1965, the Calesnicks acquired an antique house at 130 Delancey Street in Philadelphia and, in 1967, an adjoining unimproved lot at 132 Delancey Street from RDA. RDA's deeds to the Calesnicks contained a right of reverter which required that the Calesnicks complete restoration of the properties within a year after delivery of the deeds or title to the properties would return to RDA.[1]

In 1970, RDA commenced two actions against the Calesnicks in the Court of Common Pleas of Philadelphia County for return of the two properties because the Calesnicks failed to complete development in the five

1. All deeds from RDA contained similar restrictions in order to promote development and restoration rather than speculation on land value. The completion date is required by Pennsylvania law. 35 P.S. §1711(4)(1945).

years that passed after title was transferred to them. On February 28, 1973, the common pleas court permitted the Calesnicks to complete construction by February 28, 1974, but ordered that title to the properties would revert back to RDA if the Calesnicks did not complete restoration by that date. During 1974, the Calesnicks sought to transfer title to the properties to a third party named Selma Segal ("Segal"), apparently to avoid their development obligations. On October 10, 1974, the common pleas court set aside the purported transfer to Segal and vested title in RDA. Respondent Superior Court of Pennsylvania affirmed the trial court's orders.

In September of 1976, the Calesnicks filed a complaint in equity in the common pleas court to rescind the orders entered in the prior action and to recover possession of the properties, which was consolidated with RDA's 1970 actions. The Calesnicks alleged that RDA induced the common pleas court improperly to enter the order vesting title to the properties in RDA. On March 5, 1979, the Calesnicks and RDA entered into a settlement agreement to resolve both actions, which was embodied in a consent order issued by the common pleas court. Pursuant to the settlement agreement, the Calesnicks were required to submit plans for restoration of the properties to RDA for approval no later than April 5, 1979. Within 180 days after RDA approved the Calesnic's plans, the Calesnicks were required to complete exterior renovations. All interior renovations were to be completed no later than 450 days after RDA approved the plans. The parties then executed reciprocal deeds to be held in escrow by the common pleas court while the Calesnicks were permitted to complete their restoration work. The consent order also provided that the settlement agreement terminated all prior litigation between the parties.

In 1980, when the Calesnicks failed to complete restoration of the parties within the time permitted by the consent order, RDA moved to enforce the order and

recover possession of the properties. The common pleas court entered an order that the properties be returned to RDA on December 9, 1980. The Calesnicks requested reconsideration of the order and moved to rescind the settlement agreement embodied in the consent order on the basis of RDA's alleged fraud. The common pleas court denied the request for reconsideration and the motion for rescission.[2]

The Calesnicks appealed to the superior court, at which time they again alleged fraud on the part of RDA and the common pleas court arising out of the court's refusal to rescind the consent order. The superior court affirmed the orders of the common pleas court and the Supreme Court of Pennsylvania declined to hear the Calesnicks' further appeal.

While the Calesnicks' appeal to the superior court was pending, they commenced their first action in the United States District Court for the Eastern District of Pennsylvania, in which they alleged that their constitutional and civil rights were violated by a "grand conspiracy" between RDA and a host of public officials to deprive them of their properties.[3] The district court entered summary judgment in favor of RDA on the basis that the Calesnicks had already litigated their claims in the prior state court actions. The district court's judgment was affirmed by the United States Court of Appeals for the Third Circuit.

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2. The Calesnicks simultaneously commenced another action in the common pleas court in July of 1980 to modify the March 5, 1979 consent order. That action was dismissed by the common pleas court on October 22, 1980.

3. The Calesnicks alleged that RDA brought unfounded actions against them in the Pennsylvania courts, caused improper entries to be made upon the court dockets, and fraudulently induced them to enter into the consent agreement. In addition, the Calesnicks alleged that RDA had seized certain equipment and materials which they had been using on the properties.

The Calesnicks brought another action in the district court in 1985, this time against the Commonwealth of Pennsylvania, the Supreme Court of Pennsylvania, and the Superior Court of Pennsylvania, seeking to have the superior court's judgment invalidated. The district court dismissed the Calesnicks' collateral attack on the superior court's judgment for failure to state a cause of action.

Not content with the district court's determination, the Calesnicks commenced yet another action in the common pleas court in October of 1985, in which they sought collateral review of the orders entered in the 1970 and 1976 consolidated actions because of various alleged irregularities in the proceedings before the common pleas court. Ultimately, the trial court dismissed the Calesnicks' complaint on the basis of *res judicata* and collateral estoppel. The Superior Court of Pennsylvania affirmed the trial court's decision and the Supreme Court of Pennsylvania refused to allow a further appeal.

In 1986, the Calesnicks sought leave to file original process in the Supreme Court of Pennsylvania, alleging that they were unable to obtain fair and unbiased review of their claims in any other state court. The supreme court denied the Calesnicks' request on November 18, 1986.

The Calesnicks then commenced this action in the district court on February 23, 1988, repeating their allegation that RDA and the superior court participated in a fraudulent scheme to deprive them of the real property on Delancey Street. The Calesnicks sought money damages from RDA for the alleged fraud and sought to set aside the judgment of the superior court affirming the orders of the common pleas court. On May 17, 1988, the district court granted RDA's motion for summary judgment and dismissed with prejudice the Calesnicks' complaint against RDA and the superior court. On May 18, 1988, the district court entered judgment in favor of RDA and the superior court and

against the Calesnicks. Thereafter, the district court vacated its order and judgment *solely to provide a hearing on RDA's motion for an injunction against the Calesnicks and its application for counsel fees.* The Calesnicks sought to transfer their action to the United States District Court for the District of Columbia which was denied. The Calesnicks failed to appear at the first hearing on RDA's motion and application and after the hearing was postponed the Calesnicks attempted to discontinue their action. The discontinuance was denied and a hearing was held on June 21, 1988. On August 17, 1988, the Calesnicks served interrogatories and a request for production of documents upon RDA, purporting to inquire into the alleged fraudulent docket entries and transfer of title to the properties. RDA moved the district court for a protective order precluding the Calesnicks' discovery.

On September 28, 1988, the district court reinstated its orders dismissing the Calesnicks' action against the superior court and granting RDA summary judgment against the Calesnicks. The district court also enjoined Milton A. Calesnick "from filing any new action or proceeding in any court, state or federal, against any person, court, authority or any other entity in any way involved in the purchase, sale, or development" of the Delancey Street properties. Finally, the district court awarded RDA attorneys' fees in the amount of $8,102.44 against the Calesnicks.[4]

The district court's judgment was affirmed by the court of appeals.[5] The Calesnicks sought reconsidera-

---

4. The district court's decision rendered RDA's motion for a protective order moot and no decision was made thereon.

5. The Calesnicks did not raise the propriety of the district court's injunction against further litigation or the award of attorneys' fees in their appeal or request for reconsideration by the court of appeals.

tion in the court of appeals, which was denied. This petition for writ of certiorari followed.

SUMMARY OF ARGUMENT

Mere hyperbole and vituperation do not give constitutional dimension to the fanciful arguments of disgruntled *pro se* litigants. Identical issues and claims have been raised by the Calesnicks and have been decided by the courts four times. The federal and state courts have given the Calesnicks ample opportunity over two decades of protracted litigation to present their arguments and have consistently ruled against them. The Calesnicks have not been denied their day in court. Undaunted, the Calesnicks have engaged in a pernicious crusade against RDA without legal or factual foundation. The Calesnicks have caused RDA to incur substantial legal fees and have burdened already strained judicial resources with their parade of lawsuits. Were he not enjoined, Milton Calesnick would continue to harass RDA and expose it to endless, unnecessary expense through vexatious litigation. The Constitution and the laws of the United States do not require or permit such waste to continue.

REASONS FOR DENYING THE WRIT

Review by the Supreme Court of the judgment of a court of appeals on writ of certiorari is reserved only for those cases which present "special and important reasons" for such review. Supreme Court Rule 17.1 (1984). Since this case presents no principle of which is of importance to the public as distinguished from the parties, the Supreme Court need not review the judgment of the court of appeals.

I. The Petitioners' Claims Are Barred By Operation Of The Doctrines Of Res Judicata And Collateral Estoppel

The related doctrines of *res judicata* and collateral estoppel are based upon the sound jurisprudential principle that while a party may be entitled to seek relief for alleged wrongs, he or she may only do so once and, having been given the opportunity to do so, may not be heard to complain of the same wrongs in some later proceeding. It has been noted:

> the judicially-created doctrines of *res judicata* and collateral estoppel are recognized in order to support policies of relieving parties of the cost and vexation of multiple lawsuits, conserving judicial resources, preventing inconsistent decisions, and encouraging reliance on adjudications.

David H. Bathe, "Supreme Court's Views as to Res Judicata or Collateral Estoppel Effect of State Court Judgments on Federal Courts", 72 L.Ed. 2d 911, 914 (1982).

Collateral estoppel, the narrower of the two doctrines, is often thought of as "issue preclusion"; indeed, the Supreme Court has long held that when an ultimate issue of fact has been once decided by a valid, final judgment, that issue may *not* be relitigated again. *See, e.g., Parklane Hosiery Co. v. Shore,* 439 U.S. 322, 326 n. 5 (1979); *Southern Pacific Ry. Co. v. United States,* 168 U.S. 1, 48-49 (1897). There is agreement among the federal circuits that issues once decided may not be relitigated. *See, e.g., GAF Corp. v. United States,* 818 F.2d 901 (D.C. Cir. 1987); *United States v. Levy,* 803 F.2d 1390 (5th Cir. 1986); *Purter v. Heckler,* 771 F.2d 682 (3d Cir. 1985); *Walton Motor Sales, Inc. v. Ross,* 736 F.2d 1449 (11th Cir. 1985); *United States v. DiBona,* 614 F.Supp. 40 (E.D. Pa. 1984).

Res judicata is a broader doctrine than collateral estoppel. While collateral estoppel requires that an issue

actually be litigated in a prior action, *res judicata* extinguishes all claims actually litigated *and* those which *could have been* litigated in a prior action. *Cromwell v. County of Sac,* 94 U.S. 351, 352 (1877); *Wade v. City of Pittsburgh,* 765 F.2d 405 (3d Cir. 1985). *Res judicata* is frequently described, therefore, as "claim preclusion." Most courts apply a transactional approach to determine the scope of *res judicata,* so that a prior judgment extinguishes all rights of a plaintiff to remedies against the defendant with respect to all or any part of a transaction or series of transactions out of which the original claim arose. *Harnett v. Billman,* 800 F.2d 1308 (4th Cir. 1986), *cert. denied,* 480 U.S. 932 (1987); *Car Carriers, Inc. v. Ford Motor Co.,* 789 F.2d 589 (7th Cir. 1986); *Manego v. Orleans Board of Trade,* 773 F.2d 1 (1st Cir. 1985), *cert. denied,* 475 U.S. 1084 (1986); *Carbonaro v. Johns-Manville Corp.,* 526 F.Supp. 260 (E.D. Pa. 1981); *aff'd,* 688 F.2d 319 (3d Cir.), *and sub nom. Johns-Manville Corp. v. Celotex Corp.,* 688 F.2d 821 (3d Cir. 1982).

In *Gregory v. Chehi,* 843 F.2d 111 (3d Cir. 1988), the Third Circuit discussed the distinction between the two related doctrines. The court stated that *res judicata,* or claim preclusion, bars a second action if a prior action shares four identities:

(1) the same thing sued upon;

(2) the same cause of action;

(3) the same parties; and

(4) the same capacities of the parties.

Chehi, 843 F.2d at 116 (citations omitted). Collateral estoppel, or issue preclusion, bars a second action if the following four other identities are present:

(1) identical issues as those decided in a prior action;

(2) final judgment entered in the prior action;

(3) the plaintiff was a party or in privity with a party in the prior action; and

(4) the plaintiff had a full and fair opportunity to litigate the issues in the prior action.

Chehi, 843 F.2d at 121 (citations omitted). The *Chehi* decision correctly states the law in this regard, and was applied by the district court as well as the court of appeals to the underlying claims of the Calesnicks.

For purposes of collateral estoppel and *res judicata,* the law is clear and well-settled that summary judgment or a judgment on motion constitutes a final judgment on the merits. *Spiegel v. Continental Illinois Nat'l Bank,* 790 F.2d 638 (7th Cir.), *cert. denied,* 479 U.S. 987 (1987) (judgment against plaintiff for failure to state a cause of action); *Jackson v. Hayakawa,* 605 F.2d 1121 (9th Cir. 1979), *cert. denied,* 445 U.S. 952 (1980), *appeal after rem.,* 682 F.2d 344 (9th Cir. 1982), *and appeal after rem.,* 761 F.2d 525 (9th Cir. 1985); *Springer v. Seaman,* 658 F.Supp. 1502 (D. Me. 1987); *Blythe Industries, Inc. v. Puerto Rico Aqueduct and Sewer Authority,* 607 F.Supp. 1386 (S.D.N.Y. 1985). Similarly, a consent judgment is also given the same conclusive force and effect as if it were a final judgment on the merits. *Baren v. Baren,* 166 Pa. Super. 532, 72 A.2d 623 (1950).

Finally, because the federal courts are required to give full faith and credit to state court judgments, prior state judgments, even in cases involving federal questions, are entitled to the same preclusive effect in a subsequent federal action as they would be entitled in other courts in the state where the judgments were rendered. 28 U.S.C. §1738 (1988); *Migra v. Warren City School Board of Education,* 465 U.S. 75 (1984) (prior state judgment barred civil rights claim in later federal actions); *Kremer v. Chemical Construction Corp.,* 456 U.S. 461 (1982); *Allen v. McCurry,* 449 U.S. 90 (1980).

The Calesnicks' underlying complaint fits well within the tests reaffirmed by this Court in *Chehi*. In applying the test for collateral estoppel, there is no dispute that final judgments were entered and that all appeals were exhausted in the various prior actions. Nor is there any dispute that the Calesnicks were parties to the prior actions and had full opportunity to litigate the issues which they raised in the district court in those prior actions. The only real inquiry left for the district court was whether the same issues had been decided in the earlier litigation.

The district court correctly concluded that the issues raised by the Calesnicks' complaint had already been decided. The only "facts" alleged in the complaint were: (1) that RDA tampered with the docket entries of the 1970 actions to show a conveyance of title to the properties to it on October 18, 1974; (2) that RDA used its fraudulent claim of ownership to take possession of the properties and certain construction equipment thereon; and (3) that RDA fraudulently induced the Calesnicks to enter into the agreement memorialized by the consent order. The Calesnicks also alleged that the superior court joined in RDA's fraudulent scheme when it refused to restore ownership of the properties to the Calesnicks.

All of these facts had been raised and litigated in the prior actions. Indeed, in 1985 the district court concluded that the factual issues in the Calesnicks' first federal action, which were virtually identical to the issues in second federal action (*i.e.*, the underlying complaint), had been decided by the state courts. In the interim, the Calesnicks tried to re-litigate the identical factual issues back in the state court. However, the superior court dismissed the Calesnicks' 1985 state action on the basis of the prior litigation, including the federal action.

To circumvent the impediments of *res judicata* and collateral estoppel, the Calesnicks claim that the issues

raised in the two federal actions were completely different.[6] Nonetheless, the Calesnicks have *admitted* that the alleged fraud committed by RDA was revealed to the common pleas court and to the superior court, that RDA's fraud and the invalidity of the prior judgments were disclosed to the district court in the prior related action, and that the entire alleged fraudulent scheme was documented to the common pleas court when the Calesnicks moved to "rescind" the consent order.

There is no better proof that all of the issues and claims advanced by the Calesnicks in this action were, or could have been, litigated before than the Calesnicks' own admissions. At the hearing on RDA's motion for an injunction and request for counsel fees, counsel for RDA specifically questioned Milton A. Calesnick about the action commenced for leave to file original process in the Supreme Court of Pennsylvania in 1986. Mr. Calesnick admitted that they alleged in the application for original process that the superior court's order of July 22, 1983, deprived the Calesnicks of their right to fair and unbiased appellate review, that the order was fraudulent, that RDA and the superior court criminally altered docket entries, that RDA's claim of ownership of the Delancey Street properties was fraudulent, and that the superior court also defrauded the Calesnicks out of title to the properties. Most importantly, Mr. Calesnick stated:

> It isn't that I haven't had a chance to present my arguments to the court. It's whether the courts listened. It's whether the courts are unbiased. It's

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6. The Calesnicks describe the underlying federal action as a "collateral attack" upon the superior court's 1980 judgment. They claim that their prior complaint in the federal court alleged that state courts (including the superior court) failed to consider issues raised before them. Assuming, *arguendo*, that there were such a distinction, the collateral attack would also be barred by *res judicata* or collateral estoppel. *See* pp. 14-16 *infra*.

> whether they will accept facts or turn their head and make up their own opinion as to what they heard and what decisions they would like to present.

This single statement by Mr. Calesnick belies any contrary argument that all of the Calesnicks' claims have not been heard by the courts, or that the Calesnicks have not had any opportunity to present their argument to the courts, in all of the prior actions.

Not only have these issues been litigated and decided, but two courts had already concluded that the Calesnicks' claims arising out of the sale and development of the properties were barred by *res judicata* or collateral estoppel before the Calesnicks commenced this action. On July 25, 1985, the district court dismissed the Calesnicks' first federal action on the basis of the prior state proceedings, which the federal court concluded were correct in all respects. Then, on June 29, 1987, the superior court dismissed the Calesnicks' second state action on the basis that their claims had already been resolved.

It is clear that the Calesnicks had already litigated every claim which they asserted in the district court against RDA and the Superior Court. Even if the same issues had not been decided in the prior adjudications, the Complaint is barred by *res judicata* because the Calesnicks had ample opportunity to raise all of their claims in the 1970 actions and the ensuing 18 years of litigation. Every complaint ever filed by the Calesnicks has concerned their claim of title to the Delancey Street properties. The transactional application of the doctrine of *res judicata* removes all doubt that the claims are, or should have been resolved. All of the Calesnicks' claims derive from the transfer of title to 130-132 Delancey Street, whether the specific claim is predicated on allegations of fraudulent docket entries or fraudulent inducement into the Consent Order or otherwise. As the Court noted in *Chehi,* the "transaction remains unitary

'although the several legal theories depend on different shadings of the facts, or would emphasis different elements of the facts, or would call for different measures of liability of different kinds of relief.' " *Chehi,* 843 F.2d at 111 (*citing* Restatement (Second) of Judgments §24(1)(1982)).

The Calesnicks attempt to distinguish this action from all of the prior litigation by characterizing it as a collateral attack upon the Order of the Superior Court dated July 22, 1983. Not surprisingly, the Calesnicks had already commenced a collateral attack upon the decision of the superior court in the district court in 1985. There again, the district court refused to interfere with the judgment of the various Pennsylvania state courts. The district court stated:

> To address this contention [of the Calesnicks that the superior court judgment was defective] would necessarily involve [the district] court in an investigation of the internal decision making processes of the Pennsylvania Superior Court and the Pennsylvania Supreme Court and the method by which individual judges and justices on those courts arrive at their decisions.

Calesnick, et ux. v. Commonwealth of Pennsylvania, et al., C.A. No. 85-1381, slip op. at 8 (E.D. Pa. June 18, 1985). The district court declined to invade the province of the state courts and concluded that the Calesnicks failed to state a cause of action upon which relief could be granted. Were the Supreme Court to accept the Calesnicks' characterization of the present action, it is nonetheless clear that the same claim has already been rejected by the district court in 1985 and should be barred in this action.

Moreover, the Constitution does not reach to the proportions sought by the Calesnicks. In the absence of intentional discrimination (which the Calesnicks have never alleged), the Fourteenth Amendment does not

protect litigants against "judicial error." *Beck v. Washington,* 369 U.S. 541, 554-55 (1962) (*quoting Milwaukee Electric Ry. & Light Co. v. Wisconsin ex rel. Milwaukee,* 252 U.S. 100, 106 (1920)). *See also United States v. Wallace,* 448 F. Supp. 164 (E.D. Va. 1978); *Brosten v. Schuler,* 360 F. Supp. 608 (N.D. Ill. 1973); *Burton v. Peartree,* 326 F. Supp. 755 (E.D. Pa. 1971). Indeed, appellate review is not a constitutional mandate. *Lindsey v. Normet,* 405 U.S. 56 (1972). If a state provides appellate rights, the due process clause of the Fourteenth Amendment requires only that the procedure for seeking an appeal and consideration of the appeal are neither arbitrary nor unfair. *Pennywell v. Rushen,* 705 F.2d 355 (9th Cir. 1983); *Sareles v. Sheehan,* 326 F.2d 490 (7th Cir. 1963), *cert. denied,* 377 U.S. 932 (1964).

The Calesnicks seek to have the federal district court sit as a "super-appellate" court to review the propriety of all prior state court decisions, whether rendered at the trial, intermediate appellate, or final appellate level. Such a task should not be undertaken in the absence of a denial of due process. *MGA, Inc. v. General Motors Corp.,* 827 F.2d 729 (Fed. Cir. 1987), *cert. denied,* 108 S.Ct. 705 (1988) (the principles of collateral estoppel and *res judicata* apply if the alleged errors do not rise to the level of due process violation); *Krison v. Nehls,* 767 F.2d 344 (7th Cir. 1985) (civil rights statute does not permit relitigation of federal issues after full and fair hearing in the state court).

The Calesnicks were given every opportunity in the prior actions to raise the same issues and claims which they have made in this case. They have confused the fact that the prior actions were decided against them for the courts' alleged failure or refusal to consider the issues or claims. On that ill-founded basis, the Calesnicks ask the Supreme Court to require that the superior court's judgment be reviewed. However, it has been held that:

> the federal constitution has never been held to regulate the reading and research that a judge must accomplish or the mental processes that he must follow in reaching a decision. The method by which decisions are made is within the area of judicial discretion, being regulated neither by statute nor constitution.

Griffin v. Seismic Services, Inc., 353 F. Supp. 989, 990 (E.D. La. 1973) (citations omitted).

The Calesnicks' characterization of this action as a collateral attack upon the validity of the superior court's judgment does not warrant review by the Supreme Court of the judgment of the court of appeals.

II. The Petitioners Are Not Entitled To Discovery On Matters Determined Against Them By The Entry of Summary Judgment In Favor of The Respondent

Federal Rule of Civil Procedure 26 clearly defines the scope of discovery in all federal actions:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1)(1970). Although permissive in scope, Rule 26 is not without its limits. It is clear that matters *not* at issue before the federal courts may *not* be the subject of discovery inquiries. It is equally clear and well-settled that the district courts have wide discretion to determine the scope of discovery. *Wisniewski v. Johns-Manville Corp.*, 812 F.2d 81 (3d Cir. 1987); *Arnold Pontiac-GMC, Inc. v. General Motors Corp.*, 786 F.2d 564 (3d Cir. 1986).

The Calesnicks sought to discover information about the 1974 docket entries in the common pleas court in support of their underlying claim of fraud. This discovery was sought *after* the district court had already determined that summary judgment would be entered in favor of RDA on the basis of *res judicata* and collateral estoppel. The only matters remaining before the district court were RDA's right to an injunction prohibiting the Calesnicks from bringing future litigation arising out of the sale and development of the Delancey Street properties and to an award of attorneys' fees against the Calesnicks.

The Calesnicks imply that counsel for RDA made an issue of the 1974 docket entries by offering into evidence an amended order of the common pleas court dated October 10, 1974, at the injunction and fee hearing. In fact, the order of October 10, 1974, was *not* offered into evidence, although Mr. Calesnick *admitted* that such an order was signed by the trial judge in the original state court action. Mr. Calesnick also testified that he requested reconsideration of the very order the validity of which is now in question, and the request was denied. Finally, Mr. Calesnick testified that he commenced the 1976 state court action alleging, *inter alia*, that the trial judge signed the October 10, 1974, order "in the middle of the night" and that the order was never entered upon the common pleas court's docket for the 1970 action. After the 1976 action was consolidated with the original state action, the Calesnicks and RDA agreed to the entry of a consent order resolving all issues between the parties.

In *Westminster Investing Corp. v. G.C. Murphy Co.*, 434 F.2d 521 (D.C. Cir. 1970), the Court of Appeals for the District of Columbia Circuit confronted a discovery issue identical to the one raised by the Calesnicks. Westminster owned property in Washington which it

leased to Murphy. Westminster sued Murphy for damages caused during riots which followed the assassination of Dr. Martin Luther King in April of 1968. Murphy impleaded the District of Columbia as a third-party defendant, alleging that the District failed to provide adequate police protection against the riots. While Murphy was taking the depositions of District of Columbia officials, the trial court dismissed the third-party complaint for failure to state a claim on which relief could be granted. The trial court also cut off Murphy's right to complete the proposed depositions. The court of appeals affirmed the discovery ruling on the basis that "[p]rolongation of the controversy would be wasteful and useless" in light of the dismissal. *Westminster*, 434 F.2d at 526.

For much the same reason, the Calesnicks are not entitled to the discovery which they seek. The district court correctly concluded that the Calesnicks' complaint was barred by *res judicata* and collateral estoppel. That is, the Calesnicks raised issues and made claims which the district court could not consider because of the numerous prior actions between the parties. The district court's entry of summary judgment was, therefore, functionally equivalent to the dismissal in *Westminster*. To permit discovery into the 1974 docket entries would be equally wasteful and useless, and should not be permitted.

Moreover, the Calesnicks have been involved in litigation over the Delancey Street properties continuously since 1970. As early as 1976, the Calesnicks alleged impropriety in the amended order and the docket entries in the original state action. Every court that has considered this issue in the various contexts in which it has been raised by the Calesnicks has concluded that there is no substance to their allegations. Counsel for RDA was unable to produce a copy of the amended order of October 10, 1974, because in the routine process of microfilming its outdated records, the common pleas

court destroyed original documents which did not appear significant on their face. This ministerial act should not interfere with sound jurisprudence favoring the finality of prior judicial determinations.

III. The Petitioners Are Not Permitted To Challenge The Propriety Of The District Court's Injunction For The First Time In The Supreme Court

The Calesnicks never raised an objection to the district court's injunction against future litigation in the court of appeals. Absent compelling reasons, the Supreme Court ordinarily does not hear issues not raised on intermediate appeal. *Adickes v. S.H. Kress and Co.*, 398 U.S. 144, 147 n. 2 (1970); *Duignan v. United States*, 274 U.S. 195, 200 (1927). The Calesnicks have offered no explanation for their failure to appeal the district court's injunction to the court of appeals. Indeed, there can be no explanation other than that the Calesnicks abandoned their objection to the injunction.[7] There is no compelling reason why the appeal should be resumed before the Supreme Court. Therefore, the Supreme Court need not consider the propriety of the district court's injunction.

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7. The Calesnicks do not challenge the district court's power to enjoin Milton A. Calesnick under the All Writs Act, 28 U.S.C. §1651 (1949). Their objection derives from the argument that the complaint was not barred in the first instance.

The district court also awarded $8,102.44 in attorneys' fees to RDA. Although the Calesnicks urge the Supreme Court to grant certiorari in part because of the great financial burden created by the district court's award, the Calesnicks have likewise failed to object to the award of attorney's fees before the court of appeals and do not argue before the Supreme Court that the district court's award was improper in any independent respect.

CONCLUSION

The Calesnicks' petition for writ of certiorari, raising issues which have been decided against them in at least three prior actions and which do not present special and important reasons for review, does not warrant review by the Supreme Court of the judgment of the court of appeals. Therefore, the petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF BAR MEMBERSHIP

The undersigned counsel hereby certify that they are members in good standing of the Bar of the Supreme Court.

/s/ CARL S. PRIMAVERA
Carl S. Primavera

/s/ MARK C. RIFKIN
Mark C. Rifkin

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three copies hereof have been served upon the interested parties by prepaid first-class certified mail, return receipt requested, on September 7, 1989.

/s/ CARL S. PRIMAVERA
Carl S. Primavera

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Supreme Court, U.S.
FILED
AUG 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-263

IN THE

SUPREME COURT OF THE UNITED STATES

August Term, 1989

MILTON A. CALESNICK &
ELEANOR J. CALESNICK, H/W
Appellants

vs.

REDEVELOPMENT AUTHORITY OF
THE CITY OF PHILADELPHIA

and

SUPERIOR COURT OF PENNSYLVANIA
Appellees

SUPPLEMENTAL APPENDIX

MILTON A. CALESNICK &
ELEANOR J. CALESNICK
Pro Se Appellants

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SUPPLEMENTAL APPENDIX

Appendix "A" A-1

Appendix "B" A-2

Appendix "C" A-3

Appendix "D" A-7

APPENDIX "A"

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NO. 88-1834

On Appeal From The United States

District Court For The Eastern

District Of Pennsylvania

Submitted March 10, 1989

Circuit Judges

STAPLETON, GREENBERG and SCIRICA

Judgment Order

"After consideration of the contentions raised by appellants, it is ORDERED AND ADJUDGED that the judgment of the district court be and is hereby affirmed. Costs taxed against appellants."

By the Court

Circuit Judge

Clerk

Dated: Apr. 4, 1989

APPENDIX "B"

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NO. 88-1834

On Appeal From The United States

District Court For The Eastern

District Of Pennsylvania

SUR PETITION FOR REHEARING

Circuit Judges

STAPLETON, GREENBERG and SCIRICA

ORDER

The petition for rehearing filed by appellants in the above-entitled case having been submitted to the judges who participated in the decision of this court and no judge who concurred in the decision having asked for rehearing, the petition for rehearing is denied.

By the court

Circuit Judge

Dated: May 3, 1989

APPENDIX "C"

IN THE SUPERIOR COURT

OF PENNSYLVANIA

NO. 367 Phila. 1981

Appeal From The Order Of

December 9, 1980 In The

Court Of Common Pleas Of Philadelphia

County, Civil At No. 1713

September Term, 1976

Before:

WICKERSHAM, ROWLEY and WATKINS, JJ.

MEMORANDUM OPINION:

"In this case the appellants, in their pro se brief, appeal from an order of the court below which refused to rescind an agreement between the appellants and the Redevelopment Authority of the City of Philadelphia. The appellants allege that the agreement was "constructed upon fraudulent foundations, and is voidable, as a matter of law".

On December 9, 1090, the court below

entered an order which enforced a prior order of the court by directing that a deed to the premises at 130-132 Delancey Street, Philadelphia be delivered to the Redevelopment Authority of Philadelphia and filed of record.

In 1965 and 1967 appellants purchased the adjoining properties mentioned above for the purpose of restoring said premises in accordance with regulations of the Redevelopment Authority and the Redevelopment Law of the Commonwealth of Pennsylvania. In 1970, the Redevelopment Authority instituted legal actions against the appellants alleging a violation of the Redevelopment Authority agreement in that the properties were not restored within the prescribed time. During the next twelve years a series of litigations over this matter took place, several orders were issued by the court granting the appellants additional time to complete the restorations, but the restorations were never

completed in accordance with the terms of the agreement. In 1976 appellants filed an action in the Court of Common Pleas of Philadelphia County alleging fraud and seeking revestment of the title to the subject premises. On March 5, 1979 a Consent Order was executed by the court below directing that the parties produce deeds for the parcels in favor of each other, which deeds were to be held in escrow by the court pending the time set forth for completion of the restorations. If the properties were properly restored, the court would award the deeds from the Redevelopment Authority to the appellants; if the restorations did not take place, the court would award deeds to the Redevelopment Authority. Appellants failed to meet the restoration deadlines. In 1980 the Redevelopment Authority filed a motion to enforce the order of the court. After hearing, the court below awarded the properties to the Redevelopment Authority whereupon the appellants took the

instant appeal. To date, the restorations of the properties have not been completed nor have appellants provided a date for completion.

In their appeal, the appellants allege fraud on the part of the courts, the Bar Association and the Prothonotary. A review of the record demonstrates that such claims are absurd. The Redevelopment Authority properly filed its motion to enforce the previous order when appellants failed to meet their obligations under the aforesaid Consent Order. A consent judgment derives its efficacy from the agreement of the parties and sanction of the court. Thus, it binds the parties with the same force and effect which a final judgment would have after a full hearing on the merits. Baron v. Baron, 166 Pa. Superior Ct. 532, 72 A.2d 623 (1950). Simply put, the appellants have failed to comply with the consent order and, under its terms, the Redevelopment Authority is entitl-

ed to the premises in question.

Order affirmed.

APPENDIX "D"

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

NO. 88-1448

MEMORANDUM:

O'Neill, J. September 28, 1988

In this action, plaintiffs, appearing pro se, assert that have been wrongfully deprived by defendant Redevelopment Authority of title to a house and lots located at 130-132 Delancey Street, Philadelphia, and of certain building materials and construction equipment which were located at that address. They also contend that defendant Superior Court of Pennsylvania failed to review adequately and properly the issues presented in an appeal of an earlier state court proceeding involving the same properties to which they

and the Authority were parties. Defendants' actions are alleged to constitute a violation of the due process and equal protection clauses of the Fourteenth Amendment.

Precisely the same allegations were set forth by plaintiffs in previous actions in this Court against the Redevelopment Authority and the Superior Court as well as other defendants. Milton A. Calesnick and Eleanor J. Calesnick v. Redevelopment Authority of the City of Philadelphia, et al. Civil Action No. 83-0498 (E.D.Pa. July 25, 1985), 810 F.2d 1162 (3d Cir. 1987); Milton A. Calesnick and Eleanor J. Calesnick v. Commonwealth of Pennsylvania, Superior Court of Pennsylvania and Supreme Court of Pennsylvania, Civil Action No. 85-1381 (E.D.Pa. June 18, 1985).

In his exhaustive (57 pages) opinion in the Redevelopment Authority case, my colleague Judge Pollak concluded that all of

plaintiffs' claims were barred by final judgments adverse to plaintiffs rendered in various actions in the Pennsylvania courts in the years 1970 to 1984. Reference is made to his opinion for a description of the state court litigation. In the Commonwealth of Pennsylvania action, which attacked the state court judgments, Judge Pollak held that the alleged conduct of the Superior Court did not violate rights protected by the U. S. Constitution.

Since plaintiffs' claims have been the subject of final adjudication by Judge Pollak, the doctrine of res judicata bars this action. I turn now to defendants' motion for an injunction under the All Writs Act and the Authority's motion under Rule 11.

When I first met with plaintiffs and counsel, I supplied plaintiffs with a copy of Rule 11 and explained its meaning to them. I stated that if the action were withdrawn

with prejudice within the three week period fixed for the filing of their briefs in opposition to defendants' motions, the provisions of Rule 11 would not be invoked; but that if the action proceeded and were shown to be the same claim as had been presented to Judge Pollak, a Rule 11 sanction consisting of attorneys fees would be imposed. The action waw not discontinued within that period.

By Orders of May 17 and May 18, 1988, I granted the Superior Court's motion to dismiss and the Redevelopment Authority's motion for summary judgment. By Order of May 24, 1988, these orders were vacated solely in order to provide a hearing on the motions (filed prior to the Orders) for an injunction and for sanctions under Rule 11. On June 1, 1988, I denied plaintiffs' motion for a three-week continuance of the hearing date which they sought in order to prepare and file a

motion for change of venue to Washington, D.C. On June 3, 1988, plaintiffs filed a discontinuance which did not state that it was with prejudice. I denied their motion to discontinue the action.

At the scheduled hearing, on June 13, counsel for defendants appeared but plaintiffs did not. I rescheduled the hearing for June 21, 1988. At that time, all parties participated in an evidentiary hearing on the motions. Both plaintiffs were examined by counsel for the Authority. Mrs. Calesnick stated that she did not intend to institute future legal action with respect to the properties involved herein; Mr. Calesnick, however, would not agree to so refrain. He stated that he would continue to take action he deemed appropriate to protect his property and his rights.

After hearing, oral arguments and review of the briefs, and particularly after observ-

ing and listening to the oral presentations and testimony of Mr. Calesnick, I an convinced that nothing short of an injunction will prevent him from continuing to litigate the claims asserted in this action. In my view he is unwilling or unable to understand that the adverse final judgments which have been rendered in the state courts and in this court preclude further litigation of his claims with respect to the Delancey Street properties. He will continue to sue, asserting the error of the most recent adverse decision.[1]

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1. For example, paragraphs 14 and 15 of present complaint aver (with respect to Judge Pollak): "14. In a related action before the District Court For the Eastern District of Pennsylvania between these litigants, the Court accepted and utilized the Judgment and findings of the said Superior Court despite detailed explanations that the Judgment of the Superior was worthless and judicially sterile - having been developed through a constructive fraud by that Court itself.
15. In view of the distorted justice in the State Courts, and the local Federal District Court, as a result of the unlawful intrusion and influence exerted by the

> Executives of the Redevelopment Authority and of other politically influential individuals such as Judge James C. Crumlish, Jr., the Complaint will be followed by a Petition For Removal to the Federal District Court in Washington, D.C. in an effort to eliminate violations of Constitutional Rights and to free the Court from political pressures - thereby permitting the issues and facts to finally receive a fair and honest judicial review."

Plaintiffs' activities in the state courts subsequent to July 25, 1985, the date of Judge Pollak's opinion in the Redevelopment Authority case, further demonstrates the necessity for an injunction. Later that year, the Calesnicks commenced yet another action against the Redevelopment Authority, this one in Superior Court, captioned Calesnick v. Redevelopment Authority of the City of Philadelphia, et al., October Term, 1985, No. 3955, in which they again attack the state court judgments. This action was dismissed on grounds of res judicata and collateral estoppel. In 1986, the Calesnicks sought leave to file original process in the Supreme Court of Pennsylvania to make a collateral attack on the order of the Superior Court

entered on July 22, 1983. The Court denied that request.

Authority to enjoin the plaintiffs from further litigation stems from the All Writs Act, 28, U.S.C., Section 1651, which confers broad power on federal courts to control litigation and protect their jurisdiction:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usage and principles of law.

28 U.S.C. S1651(a)(1985). This Court previously has interpreted the act to provide authority for granting injunctions "where such action is necessary to prevent harassment of individuals and government officials through repeated filing of baseless complaints." Adams v. American Bar Association et al., 400 F. Supp. 219, 227 (E.D.Pa. 1975). See also Castro v. United States, 584 F. Supp. 252, 264 (D.P.R. 1984) ("Federal courts have the inherent power to enjoin litigants who use the courts as a stage for a personal vendetta of

harassment or abuse.") Thus, when, as in the present case, "it is apparent that the litigation is baseless the issuance of an injunction is proper." Adams, 400 F. Supp. at 228 (quoting Boruski v. Stewart, 381 F. Supp. 529 (S.D.N.Y. 1974).

Judicial resources are not infinite and plaintiffs' baseless litigation inevitably has postponed the resolution of claims of other litigants who as yet have had no day in Court. Therefore, I also find that a Rule 11 sanction in the form of an award of attorneys fees is both justified and necessary to penalize plaintiffs for their conduct in beginning and pursuing this action. The amount claimed by the Authority[2] is fair and reasonable and represents the fees and expenses actually incurred by it; the number of hours spent in defense was also reasonable. I will not attempt to impose an additional sanction to

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2. The Superior Court has not requested an award of fees.

penalize plaintiffs for the substantial expenditure of judicial resources in this action and in the prior two federal actions, however that factor provides additional justification for the payment of attorneys fees that I am requiring. Plaintiffs have not challenged the amount of the requested award and have not asserted that payment thereof is beyond their means.

I have tried to dispose of this action without granting an injunction or issuing sanctions. At the first meeting, I urged plaintiffs to retain counsel and took the other actions described herein (pp. 2-3). At the most recent hearing, with the consent of defendants, I talked privately but on the record to plaintiffs in an unsuccessful attempt to get them to discontinue the action. At the same hearing Mr. Calesnick was given the opportunity to affirm that he would bring no additional actions but he declined to do so. I believe I have no other course open to me except to

issue an injunction and to impose a financial sanction. In my view, both are necessary to prevent future suits; and the award of attorneys fees is necessary to remedy the flagrant violation of Rule 11.